

IN THE CLAIMS:

A substitute claim containing the following proposed amendment is submitted herewith, on a separate sheet.

12. (Amended) A [recombinant expression vector containing] peptide encoded by the polynucleotide of Claim 11.

REMARKS

A. Claim Amendment

Claim 12 is amended to correct an obvious error (subsequent claims refer to the "peptide of Claim 12"), by correcting the claim to be directed to the peptide described. No new matter is added by this amendment.

B. Provisional Election.

Applicants provisionally elect the claims of Group I.

C. Traversal of Restriction Requirement.

In the Office Action, the Examiner has required restriction between and among each separate peptide, antibody, polynucleotide and method claimed in the application. Applicants respectfully traverse the requirement.

As to the peptide claims and the nucleotide claims in particular, the Examiner's attention is drawn to MPEP §803.04 (implementing OG Notice 1192 OG 68 (11/19/96)), which confirms the waiver by the Commissioner of 37 CFR §1.141 *et seq.*, as to the number of nucleotide sequences which will be examined in an application (ten) without requirement for restriction between them. Only four sequences are reflected in the pending nucleotide claims, and only four sequences are reflected in the pending peptide claims.

As to the nucleotide claims, MPEP §803.04 makes clear that an election between the claims directed to the various nucleotide sequences cannot be required. Thus, Claims 1 and 2 of Group I; Claims 7 and 8 of Group IV; Claims 11 and 12 of Group VI and Claims 16 and 17 of Group IX should be rejoined for examination.

As to the peptide claims, the same reasoning that supports the partial waiver of 37 CFR §1.141 *et seq.* as to nucleotide sequences applies. Indeed, waiver of §1.141 as to peptide claims is contemplated in MPEP §803.04, which speaks to protein amino acid sequences in general (and those of particular complexity justifying an election of less than 10 such sequences). Further, Applicants note that the peptide claims are all directed to the same molecule, and fragments or variants thereof (SEQ.ID.No. 2 of Claims 3 and 4 is the full-length Super-Sog peptide, while Claims 9 and 10 [Group V] are directed to the peptide with additional vector-derived residue and Claims 13 [Group VII], 18 and 19 [Group X] are directed to fragments of the molecule). It is difficult to imagine that a search directed to the amino acid sequence of SEQ.ID.No. 2 and Claims 3-4 would not also reveal the smaller portions thereof covered by Claims 9-10, 13 and 18-19. Thus, no "serious burden" in searching the species of peptide claimed is presented sufficient to justify requiring restriction between the peptide claims (MPEP §803, *et seq.*). Rejoinder of the peptide claims (3, 4, 9,10, 13, 18 and 19) into a single group for examination is therefore requested.

Rejoinder of the nucleotide claim groups to the peptide claim groups is also requested. MPEP §803.04 makes clear that "nucleotide sequences encoding the same protein" are not sufficiently independent and distinct to justify restriction among claims directed to the sequences. Here, the nucleotide claims are each directed to the same protein (Super-Sog), and fragments/variants thereof. Clearly, the nucleotide and peptide claims are highly related. Further, searching in publicly available nucleotide sequence databases (e.g., GENBANK) very often brings one to records which contain both a nucleotide sequence and the amino acid sequence coded thereby (or, at a minimum, contains an electronic link from the nucleotide sequence record to the amino acid sequence record). Therefore, no "serious burden" sufficient to justify restriction between the nucleotide claim grouping on one hand, and the peptide claim groupings on the other, is presented by the application.

For all of these reasons, rejoinder of the nucleotide claims to one another; of the peptide claims to one another; and of the nucleotide claim groupings to the peptide claim groupings, is requested.